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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,766	05/21/2001	Stephen P. Vossler	450.322US1	8159
24333	7590	10/18/2005	EXAMINER NEYZARI, ALI	
GATEWAY, INC. ATTN: SCOTT CHARLES RICHARDSON 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			ART UNIT 2655	PAPER NUMBER
DATE MAILED: 10/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/862,766	Applicant(s) VOSSLER, STEPHEN P.	
	Examiner ALI NEYZARI	Art Unit 2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-19 and 21-24 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mauney et al (US 5,659,156) in view of PCT No. WO 00/75924 (cited by applicant).

Mauney et al disclose an ear molds for holding communication devices within the ear in a secure and comfortable manner. Fig 3 shows the left ear mold 301 with an audio communication device 302 installed (col. 4, lines 54-64).

Mauney et al disclose the claimed invention except for the components such as memory for storing digitized audio and a player.

PCT, WO 00/75924, disclose a portable audio player suitable for use for an MP3 player. The audio player comprises of an ear module (4) to be supported by an ear (Fig 3). The module includes a speaker (130), a memory for storing digitized audio (F), a D/A converter (120), and micro processor (100) (Fig 6) (page 5, lines 18-25, page 7, lines 16-21).

It would have been obvious to one of ordinary skill in the art to use the portable audio player as disclosed in the PCT '924, in the ear mold of Mauney et al in order to have the ear module entirely supported by an ear, wherein the ear module being free of

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any other structure providing support on the body of a user when supported on the ear (as claimed in new claims 22-24).

With respect to claim 5, the module comprises a speaker (130) and a controller that converts the stored digitized audio signals to signal useable by the speaker (Fig 6, page 7, lines 16-24).

With respect to claims 6, 11, 15, 17 and 21, the module comprises MP3 recorder, where MP3 files stored in the flash memory.

With respect to claims 10 and 14, the module consists of memory (F in fig 6)

With respect to claim 3, PCT '924 disclose the claimed invention except for the ear bud having an ear clip. As shown in fig 4, there is an ear hook 3 to hold the module on the ear. It would have been obvious to one of ordinary skill in the art to use another method for holding the module over the ear such as an ear clip in order to secure the module over the ear.

With respect to claims 12 and 13, it would be an intended use to make the module and its peripheral device to appear as jewelry. In fact, a device with any design could be claimed to be a jewelry look-alike, it is just a matter of taste.

Response to Arguments

Applicant's arguments with respect to claims 1-19, 21-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

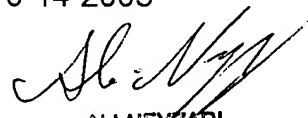
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALI NEYZARI whose telephone number is 571-272-7622. The examiner can normally be reached on Mon-Fri from 9:00 AM TO 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WAYNE YOUNG can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALI NEYZARI
Primary Examiner
Art Unit 2655
10-14-2005



ALI NEYZARI
PRIMARY EXAMINER